

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY)	
AVERAGE WHOLESALE PRICE)	MDL NO. 1456
LITIGATION)	Civil Action No. 01-12257-PBS
)		
THIS DOCUMENT RELATES TO:)	Judge Patti B. Saris
)	
Counties' Consolidated Complaint)	
)		

**MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS BRISTOL-MYERS
SQUIBB COMPANY AND ONCOLOGY THERAPEUTICS NETWORK
CORPORATION**

Pursuant to Fed. R. Civ. P. 56(b), Defendants Bristol-Myers Squibb Company (“BMS”) and Oncology Therapeutics Network Corporation (“OTN”) (collectively “BMS”) respectfully move this Court for summary judgment on all claims against them in the Third Amended Master Consolidated Complaint asserted by or on behalf of Classes 1 and 2, as certified by the Court in its Order dated January 30, 2006. The grounds for this motion are set forth in the Memorandum of Law of Defendants Bristol-Myers Squibb Company and Oncology Therapeutics Network Corp. In Support Of Motion For Summary Judgment, together with the affidavit of Denise M. Kaszuba, sworn to February 18, 2004 , the declaration of Zoltan Szabo dated October 25, 2004, the declaration of Steven M. Edwards, dated March 15, 2006 and the expert declaration of Dr. Gregory K. Bell, Ph.D. dated March 15, 2006.¹

¹ The Memorandum of Law of Defendants Bristol-Myers Squibb Company and Oncology Therapeutics Network Corp. In Support Of Motion For Summary Judgment, the declaration of Steven M. Edwards, and the expert declaration of Dr. Gregory K. Bell, Ph.D. shall be filed with the Court pursuant to the Motion For Leave To File Under Seal Of Defendants Bristol-Myers Squibb Company And Oncology Therapeutics Network Corporation.

WHEREFORE, for the reasons set forth in the memorandum, report, declarations and affidavit described above, BMS respectfully requests that the Court grant it summary judgment on all claims against them in the Third Amended Master Consolidated Complaint asserted by or on behalf of Classes 1 and 2, as certified by the Court in its Order dated January 30, 2006 and enter an order:

a. granting summary judgment on all claims against them in the Third Amended Master Consolidated Complaint asserted by or on behalf of Classes 1 and 2, as certified by the Court in its Order dated January 30, 2006; and

b. providing such other and further relief as the Court deems just and proper.

Dated: Boston, Massachusetts
March 15, 2006

Respectfully Submitted,

By: /s/ Lyndon M. Tretter
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Corp.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Defendants hereby request a hearing for oral argument on this motion for summary judgment.

CERTIFICATION PURSUANT TO LOCAL RULE 7.1

I certify that the moving party has communicated with counsel for Plaintiffs in an effort to resolve the dispute referred to in this motion, and that the parties have not been able to reach agreement with respect thereto.

/s/ Lyndon M. Tretter
Lyndon M. Tretter

CERTIFICATE OF SERVICE

I, Lyndon M. Tretter, certify that a true and correct copy of the foregoing, together with redacted copies of (1) the Memorandum of Law of Defendants Bristol-Myers Squibb Company and Oncology Therapeutics Network Corp. In Support Of Motion For Summary Judgment; (2) the Merits Report and Declaration of Gregory K. Bell, Ph. D.; and true and correct copies of (3) the Declaration of Steven M. Edwards; (4) the Declaration of Zoltan Szabo In Support Of Defendant Bristol-Myers Squibb Company's Memorandum In Opposition To Plaintiffs' Motion For Class Certification; and (5) the Affidavit of Denise M. Kaszuba were delivered to all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending on March 15, copies to Lexis-Nexis for posting and notification to all parties.

/s/ Lyndon M. Tretter
Lyndon M. Tretter